



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2021-0037]

Surface Transportation Project Delivery Program; California High-Speed Rail

Authority Audit Report

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Surface Transportation Project Delivery Program (STPD Program), often referred to as the “NEPA Assignment Program,” allows a State to assume FRA’s environmental responsibilities for Federal environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for railroad projects. When a State assumes these responsibilities, it carries out the assigned environmental review process, in lieu of FRA. The STPD Program requires annual audits for the first four years of the State’s lead role in the program to ensure compliance with program requirements. FRA is issuing this notice to advise the public that it has conducted the second annual audit of the State of California, acting by and through, the California High-Speed Rail Authority (CHSRA), and seek comment from the public on the draft audit report. Following the comment period, FRA will publish a final audit report.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments related to Docket No. FRA-2021-0037 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (docket #). All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Marlys Osterhues, Chief Environment and Project Engineering, RPD, telephone: (202) 493-0413, email: Marlys.Osterhues@dot.gov.

SUPPLEMENTARY INFORMATION:

Privacy Act Statement: FRA will post comments it receives without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether commenters identify themselves or not, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Draft Surface Transportation Project Delivery Program Audit of the California High-Speed Rail Authority conducted between: December 13-16, 2021

Executive Summary

This report summarizes the results of FRA's second audit of CHSRA's conduct in carrying out its assigned environmental review responsibilities between July 1, 2020, and July 30, 2021 (Audit Period), to assess CHSRA's compliance with applicable Federal law, and the memorandum of understanding (section 327 MOU) executed July 23, 2019, between CHSRA and FRA. The Secretary, acting by and through FRA, is required to conduct annual audits of the State during each of the first 4 years of State participation in the STPD Program. 23 U.S.C. 327(g).

To conduct the audit, FRA formed a team (Audit Team) in April 2021. The Audit Team consisted of NEPA subject matter experts (SMEs) from FRA's environmental and project management divisions and the John A. Volpe National Transportation Systems Center. In addition, FRA designated a Senior Environmental Protection Specialist to serve as a NEPA Assignment Program liaison to CHSRA. The Audit Team reviewed samples of project documentation related to CHSRA's environmental decisions completed during the Audit Period, and CHSRA's self-assessment of its program. In addition, the Audit Team reviewed CHSRA's internal procedures related to Quality Assurance/Quality Control (QA/QC), project files, updated guidance documentation, and conducted interviews with relevant CHSRA staff between December 13 and 16, 2021. The Audit Team also conducted an interview with the U.S. Army Corps of Engineers on January 19, 2022. FRA provided CHSRA an opportunity to review the findings described below and has considered CHSRA's comments in developing this draft audit report.

Overall, the Audit Team found that CHSRA continues to carry out its assigned environmental responsibilities and complies with the provisions of the section 327 MOU.

Background

The STPD Program, codified at 23 U.S.C. 327, allows a State to assume FRA's environmental responsibilities for review, consultation, and compliance for railroad

projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of the FRA. CHSRA published its application under the STPD Program on November 9, 2017 and made it available for public comment for 30 days. After considering public comments, CHSRA submitted its application to FRA on January 31, 2018. The application served as the basis for developing the section 327 MOU, which identifies the responsibilities and obligations that CHSRA would assume.

FRA published a notice of the draft section 327 MOU in the *Federal Register* on May 2, 2018, for a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FRA and CHSRA considered comments and proceeded to execute the section 327 MOU. On July 23, 2019, CHSRA assumed FRA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws, as described in the section 327 MOU.

To oversee CHSRA's compliance, FRA conducts annual audits during each of the first four years of State participation. After the fourth year, FRA will not conduct annual audits but will monitor CHSRA's compliance with the section 327 MOU and applicable Federal laws and policies and assess whether CHSRA is attaining the performance measures listed in part 10 of the section 327 MOU. During monitoring FRA may request information from CHSRA and relevant Federal agencies, verify CHSRA's financial and personnel resources dedicated to carrying out the section 327 MOU, and review documents and other information. FRA provides the results of each annual audit to the public and solicits comment. FRA published the first audit report of CHSRA on April 21, 2021.

Audits are the primary mechanism through which FRA, oversees CHSRA's compliance with the provisions in the section 327 MOU. FRA conducts annual audits to: (1) oversee the State's compliance with this MOU and applicable Federal laws and policies; (2) determine the State's attainment of the performance measures identified in

part 10 of the section 327 MOU; and (3) collect information needed for the Secretary's annual report to Congress pursuant to 23 U.S.C. 327(i). FRA intends to conduct two more annual audits consistent with 23 U.S.C. 327(g) and part 11 of the section 327 MOU. FRA will publish the results of each audit in a draft report and make the report available for public comment in the *Federal Register*, before publishing the final audit report.

Scope and Methodology

This audit covers all final NEPA decisions issued by CHSRA within the Audit Period. The Audit Team reviewed a sampling from CHSRA's project files complied for NEPA decisions; CHSRA's self-assessment report; and CHSRA current policies, guidance, and manuals relating to NEPA decisions and the decision-making process. FRA reviewed twelve reexaminations of previously approved final environmental impact statements (EIS) and one final EIS/record of decision (ROD), representing all projects completed within the Audit Period. In conducting the audit, the Audit Team focused on objectives related to six NEPA Assignment Program Elements: program management, documentation and records management, quality assurance and control (QA/QC), training, performance measurement, and legal sufficiency. Each NEPA Assignment Program Element is described further below.

The Audit Team interviewed nine CHSRA staff in CHSRA's regional offices and its headquarters office. In addition, the Audit Team interviewed one staff member from the U.S. Army Corps of Engineers to ensure timely and effective coordination occurs with this Federal resource agency partner. The Audit Team invited CHSRA staff, middle management, legal counsel, and executive management to participate in the interview process to ensure representation from a diverse range of staff expertise, experience, and program responsibility.

The Audit Team compared the procedures outlined in CHSRA's current environmental manuals and policies to the information obtained during staff interviews and project file reviews to evaluate CHSRA's performance against its documented procedures. The Audit Team then assessed CHSRA's performance based on the six NEPA Assignment Program Elements.

Audit Results

Overall, FRA found that CHSRA has carried out the environmental responsibilities assumed through the section 327 MOU and the Audit Team found that CHSRA is complying with the section 327 MOU. The following sections detail each of FRA's findings with respect to CHSRA's performance and the six NEPA Assignment Program Elements.

Program Management

Consistent with part 4 of the section 327 MOU, the State committed to maintaining adequate organizational and staff capability at CHSRA to manage the STPD Program. This includes integrating the STPD Program into CHSRA's environmental and project development processes, using the appropriate SMEs, and developing, maintaining and implementing internal policies and procedures. In reviewing documentation for this audit, FRA found that CHSRA continues to implement an effective STPD Program by adhering to its Environmental Policies and Procedures Handbook, Environmental Compliance Program Manual, and the QA/QC Plan. The section 327 MOU requires CHSRA to conduct a self-assessment of their program implementation, and document actions to improve upon the previous audit self-assessment findings. CHSRA has conducted the required self-assessment and implemented actions to improve upon the findings described in the first audit.

CHSRA has incorporated the STPD Program into its overall project development process. CHSRA staff and counsel at the headquarters office are responsible for ensuring

NEPA Assignment responsibilities are fulfilled by reviewing projects for compliance with assigned environmental laws and regulations independently from those responsible for developing the NEPA and related documentation as required in part 3 of the section 327 MOU.

CHSRA environmental staff at the three regional offices continues to coordinate their NEPA related project-work with headquarters staff through NEPA Coordinators. While no changes in staff functions have occurred since the completion of the first audit, the CHSRA NEPA Assignment Team has demonstrated an increased level of engagement in the overall project development process during the Audit Period. FRA's Audit Team found that the CHSRA is effectively incorporating environmental justice and climate change considerations into the CHSRA planning process.¹ CHSRA noted that it is currently updating its environmental justice guidance. The Audit Team recognizes CHSRA efforts to ensure compliance with these Administration initiatives through successfully tracking and implementing commitments.

Documentation and Records Management

In accordance with part 10.2.A of the section 327 MOU, CHSRA agreed to maintain documented compliance with NEPA and other Federal environmental statutes and regulations. During the Audit Period CHSRA issued 13 final NEPA decisions. The Audit Team reviewed the project files for twelve reexaminations of previously approved Final EISs and one combined Final EIS/ROD. These projects represented all CHSRA environmental review decisions completed within the Audit Period. The Audit Team found that CHSRA maintained a complete final electronic project record, containing all NEPA-related documentation, in accordance with the section 327 MOU.

¹ CHSRA's environmental justice guidance is available at: https://hsr.ca.gov/wp-content/uploads/docs/programs/title_VI/CHSRA%20EJ%20Guidance%208-14-2012.pdf. CHSRA also publishes an annual sustainability report documenting its efforts to mitigate climate impacts. The 2021 report is available at: https://hsr.ca.gov/wp-content/uploads/2021/09/Sustainability_Report_2021.pdf.

Quality Assurance/Quality Control

CHSRA agreed to carry out regular QA/QC activities to ensure the assumed responsibilities are conducted consistent with applicable law and part 10.2.B of the section 327 MOU. The QA/QC program includes coordination between the regional environmental staff and the headquarters' NEPA assignment team, including CHSRA NEPA counsel. The NEPA assignment team reviews all NEPA documentation and technical reports to ensure regulatory compliance and technical sufficiency. CHSRA staff also engage with SMEs, when appropriate, regarding various environmental resources and regulations.

During interviews with the Audit Team, CHSRA described the continued use of comment resolution workshops to ensure appropriate consideration of all comments, both internal and from external stakeholders, including agencies. In addition, CHSRA continues to utilize an electronic file system to manage documentation effectively across the program. CHSRA provided the Audit Team documentation used to track QA/QC in the form of project review checklists, comment summary reports, and other associated documentation with project file reviews.

Based on the information evaluated by the Audit Team, the Audit Team found that CHSRA is conducting regular QA/QC activities in accordance with the section 327 MOU.

Training Program

CHSRA committed to implementing training necessary to meet its environmental obligations consistent with part 12 of the section 327 MOU. CHSRA developed its NEPA Assignment Training Plan to meet this requirement. The training covers topics related to CHSRA's assigned environmental responsibilities. Based on interviews and a review of training documentation and records, all CHSRA staff received the training in accordance with the NEPA Assignment Training Plan during the Audit Period.

During interviews, CHSRA noted their continuing efforts to ensure effective coordination with Federal agencies, including the Federal Aviation Administration. These efforts may include providing additional training opportunities regarding high-speed rail system requirements. The Audit Team recognizes CHSRA ongoing activities and will evaluate these training efforts during the next audit cycle.

Performance Measures

As described in part 10.2 of the section 327 MOU, FRA and CHSRA established performance measures that CHSRA will seek to attain, and that FRA will consider during FRA's audits.

FRA evaluated CHSRA's administration of its assigned responsibilities against the performance measures outlined in the 327 MOU. The Audit Team recognizes the CHSRA efforts to implement a robust self-assessment review process. Based on results of the self-assessment, project file review and interviews, the FRA Audit Team found that CHSRA is attaining the performances measures in the section 327 MOU.

Legal Sufficiency

CHSRA maintains a documented legal sufficiency review for draft and final documents, which generally includes multiple rounds of review and procedures for elevating issues of concern, as outlined in the section 327 MOU. This review is conducted by CHSRA NEPA attorneys who also engage with NEPA outside counsel, as necessary. CHSRA attorneys are also involved in the preparation of guidance and trainings for staff. Since the first audit, CHSRA has updated its guidance for reevaluations and reexaminations, to include a legal sufficiency review for these documents.

Next Steps

FRA is providing the draft audit report for public review and comment for a 30-day period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FRA will publish the final audit report in the *Federal Register*.

Issued in Washington, D.C.

Jennifer Mitchell,
Deputy Administrator.

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